ter was 40% butter and the balance grease, it was held that this statement was actionable *per se* because it charged the manufacturer with acts involving moral turpitude both as an individual and as a dealer. *Dabold* v. *Chronicle Publishing Co.*, 107 Wis. 357, 83 N. W. 639. A statement that ice cream sold by a manufacturer caused the death of one child and made others ill was considered actionable *per se*. *Larsen* v. *Brooklyn Daily Eagle, supra.*

A distinction seems to be made by the courts between statements alleging that the plaintiff sold rotten goods and statements alleging that some of his goods were rotten. *Burnet* v. *Wells*, 12 Mod. 420. The former, involving both the plaintiff and his goods, are actionable *per se*. *Marino* v. *Di Marco, supra; Mowry* v. *Raabe*, 89 Cal. 606, 27 Pac. 157; *Blumhardt* v. *Rohr, supra.* The latter are actionable only when special damage is proved. *Burnet* v. *Wells, supra.*

No cases directly in point appear to have arisen in Virginia. See *Moore* v. *Rolin*, 89 Va. 107, 15 S. E. 520.

PARTY WALLS—INJUNCTION AGAINST USE BY ADJOINING LANDOWNER WITHOUT PAYING SHARE OF COST UNDER ORAL CONTRACT.—In pursuance of an oral agreement between adjoining landowners, one of them built a wall, one-half of which was on his own land and one-half upon the land of the other owner. The builder was to be sole owner of the wall until the adjoining owner had paid one-half of the cost of construction. Upon this payment the non-builder would be entitled to make said wall a party wall to any building he should erect. The non-builder conveyed his lot to a third person who in turn conveyed to the defendant. Without payment of the stipulated sum the defendant cut holes in the wall for the purpose of building against the wall. Suit was brought to enjoin the action of the defendant. *Held*, the injunction is granted. *Hanson* v. *Beaulieu* (Minn.), 176 N. W. 178.

In such case the question is at once raised whether an oral agreement pertaining to a party wall is a contract that may be avoided because within the scope of the Statute of Frauds. It is universally held that such an agreement, even though for an interest in land, is taken out of the Statute of Frauds by performance, and execution of the contract by one party renders the other party liable. *Walker* v. *Shackelford*, 49 Ark. 503, 5 S. W. 887; *Rawson* v. *Bell*, 46 Ga. 19.

Under a contract such as that under consideration the builder is constituted the sole owner of the wall until the other party elects to pay his share of the cost of construction. *Mickel* v. *York*, 175 Ill. 62, 51 N. E. 848. An attempt to cut holes in the wall is a continuing trespass, and in such case injunction is the proper remedy. See *Miller* v. *McClelland* (Iowa), 173 N. W. 910; *Masson's Appeal*, 70 Pa. St. 26.

What constitutes sufficient constructive notice to a grantee of the non-builder of the existence of the contract to pay one-half the cost of constructing the party wall is a point upon which the courts are not agreed. Some courts uphold the doctrine that knowledge by the purchaser of the existence of a party wall on the land he intends to pur-

chase is not notice to him that he must contribute to the cost of its construction if he intends to make use of it. *Hawkes* v. *Hoffman*, 56 Wash. 120, 105 Pac. 156, 24 L. R. A. (N. S.) 1038, and note. Others hold that a party wall standing upon a lot at the time of its purchase constitutes a sufficient sign of servitude to put the purchaser upon inquiry. *Ingals* v. *Plamondon*, 75 Ill. 118; *Howell* v. *Goss*, 128 Iowa 569, 105 N. W. 61.

As to whether a contract under seal to pay the cost of erection of a party wall is a covenant which runs with the land and binds the assigns of the covenantor, see 1 VA. LAW REV. 648.

Statement of the ownership, management, circulation, etc., required by the Act of Congress of August 24, 1912, of the VIRGINIA LAW REVIEW, published monthly at University, Virginia, for April 1, 1920.

State of Virginia.

County of Albemarle.

Before me, a notary public, in and for the State and county aforesaid, personally appeared James B. Rixey, who, having been duly sworn according to law, deposes and says that he is the Business Manager of the VIRGINIA LAW REVIEW, and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 443, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher: The Virginia Law Review Association, University Va.

Editor: George B. Vest, Charlottesville, Va.

Managing Editor: No Managing Editor.

Business Manager: James B. Rixey, University, Va.

2. That the owners are: (Give names and addresses of individual owners, or, if a corporation, give its name and the names and addresses of stockholders owning or holding 1 per cent or more of the total amount of stock.) The Virginia Law Review Association is a voluntary society composed of undergraduate law students in the University of Virginia.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.) No bondholders, etc., as it is a non-stock voluntary society.

JAMES B. RIXEY.

Sworn to and subscribed before me this 23rd day of March, 1920.

C. W. WATTS, *Notary Public*

[SEAL.]

My commission expires December 26, 1923.